

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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**THE CLEMENTINE COMPANY LLC. d/b/a THE THEATER  
CENTER, PLAYERS THEATER MANAGEMENT CORP. d/b/a  
THE PLAYERS THEATER, WEST END ARTISTS COMPANY  
d/b/a THE ACTORS TEMPLE, SOHO PLAYHOUSE INC. d/b/a  
SOHO PLAYHOUSE, THE GENE FRANKEL THEATRE LLC.,  
TRIAD PROSCENIUM PARTNERS INC. d/b/a THE TRIAD,  
CARAL LTD. d/b/a BROADWAY COMEDY CLUB, and  
DO YOU LIKE COMEDY LLC. d/b/a NEW YORK  
COMEDY CLUB,**

Plaintiffs,

**DECLARATION**

Against

Civil No.: 20-cv-8899

**ANDREW M. CUOMO, in his Official  
Capacity as Governor of the State of New York,  
ATTORNEY GENERAL OF THE STATE OF NEW YORK,  
BILL de BLASIO, in his Official Capacity as Mayor of the  
City of New York and THE STATE OF NEW YORK,**

Defendants.

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Catherine Russell, on the date noted below and pursuant to § 1746 of title 28 of the United States Code, declares the following to be true and correct under penalty of perjury under the laws of the United States of America:

1. I am the General Manager and Owner of Plaintiff The Clementine Company LLC. d/b/a The Theater Center. I make this declaration in support of Plaintiffs' application for a preliminary injunction restraining Defendants, and all those acting in concert with them, from enforcing the shut down of *small venue theaters*.

2. My *small venue theaters* have been shut down by Defendants since March 16, 2020. Each day that my business is subject to the shut down results in irreparable and devastating economic loss and, each day that this wrong is allowed to persist is one day closer to permanently shutting my doors.

3. The Theater Center consists of two theaters: The Jerry Orbach Theater and the Anne L. Bernstein Theater. Each theater has 199 seats.

4. In New York, you can safely have 50 people celebrating at a wedding, eating at a restaurant, shopping at the mall, playing blackjack at a casino and working out at a gym but 50 people cannot sit in a small theater at 25% capacity.

5. I have exceeded all CDC safety guidelines in preparing my theaters for the eventual opening which includes the following:

a. I have installed 10 Matterhorn 1002 Air Scrubbers which reach every space throughout my complex to disinfect and neutralize viral, bacterial and VOC issues.

b. I have installed Merv 13 filters in every HVAC unit.

c. All employees and actors will be covid tested according to New York guidelines.

d. All patrons and staff will be required to have a temperature check before entering the premises.

e. Masks will be required throughout the complex.

f. I have installed general admission seating to allow the box office personnel to space groups and individuals a minimum of six feet apart in each direction.

g. I have installed plexiglass barricades between all employees and patrons.

h. Hand sanitizer stations will be set up throughout the facility.

6. New York's selective enforcement of social distancing requirements has undermined the rationale for continued business closures.

7. Defendants have failed to provide any pre- or post-deprivation review of the orders that have shut down my business since March. I have been told to shut down because my business is considered "non-essential."

8. I can conduct my business in full compliance with all of the rules imposed on businesses allowed to operate under the shut down orders. Thus, the shut down orders are not narrowly tailored to achieve a compelling governmental interest.

9. The shut down orders deprive my business of equal protection of law because casinos, restaurants, malls, gyms, catering halls, schools are allowed to operate, but my business is not allowed to operate even though we are similarly situated.

**WHEREFORE**, declarant respectfully requests that this Honorable Court enter an Order compelling Defendants to immediately refrain from enforcing the shut down orders and allowing Plaintiffs to open their *small venue theaters* at a minimum 25% capacity and for such other and further relief as this Court deems just and proper.

Dated: October 26, 2020

*CWR*

  
Catherine Russell